

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, APRIL 16, 2008
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, April 16, 2008 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Darren Jones, Kim Griffo, Greg Mayes, Ed Davis, and Scott Seiber

Board Members Absent: Bill Whitaker and Tom Auer

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, Matt Mattingly, Brent Bennett, Brent Haverkamp, Zack Ludwick, Bobby Deitz, Keith Morgan, Sheila Wilson and public audience

Chairman Scott Seiber called the meeting to order at 4:30 p.m., and welcomed all guests and applicants. Chairman Seiber asked for approval of the minutes from the March 19, 2008 Regular Meeting.

Ed Davis made a motion to approve the minutes from the March 19, 2008 Regular Meeting. Darren Jones seconded the motion and it carried with a 5-0 voice vote.

Public Hearing to Review the Dimensional Variance Request for an Additional 105.49 Square Feet of Signage to an Existing Dimensional Variance – 100 N. 12th Street – CVS Pharmacy: Peyton Mastera referred to pictures of the CVS building and signage on a Power Point presentation. CVS was granted a variance in 1997 for 300 square foot of signage. Somewhere along the way, CVS exceeded their 300 square foot variance. CVS is currently requesting to expand their 300 square foot of wall signage to 391.45 sq. ft. The sign ordinance states: “For double frontage or corner lots, two (2) wall business signs for each tenant or lessee mounted on the face of the building which fronts on both primary and secondary street with the size to be determined above. No flat wall sign shall project above the roof or parapet line.” Being as CVS is located on a corner lot, they would be allowed a 145.13 sq. ft. wall sign on the West side of the building and a 80.63 sq. ft. wall sign on the South side of the building (total: 225.76). CVS is going to be replacing all of the current signage because of color changes and also wishes to add two additional “24 hour” box signs. The exceeding size of the current signs was discovered when the sign company recently presented a request for new signage. Peyton stated that the total square feet of the current signage is 358.79. In comparison, Rite-Aid and Walgreens each have 300 square feet in their signage. *Matt Mattingly left at 5:00 p.m.*

Chairman Seiber opened the public hearing and asked if there was anyone that wished to speak in favor of the variance request. Mr. Brent Bennett, spokesman for CVS, was sworn in. Mr. Bennett stated that he is a representative for A-1 Expenditures and his job is to handle the permit and variance services on signage for CVS. CVS is currently in the process of updating their signage throughout the Midwest. They are changing the color by 1/10 density and adding two “24 hour” box signs as well. The box signs will be 18” x 18” totaling 16.33 square feet each.

Chairman Seiber asked if there was anyone wishing to speak in opposition of the variance. There was no one. The public hearing was closed and discussion was opened to the Board.

Ed Davis made a motion to allow CVS to change their signage with an overall allowance not to exceed 360 square feet, with configuration in any manner that they wish, and with the condition of no free standing sign as it will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Darren Jones seconded the motion and the motion carried 3-2. Kim Griffo and Scott Seiber voted no.

Public Hearing to Review the Conditional Use Permit Application for a Multi-family Planned Development Project in B-2 and R-4 Zoning Districts – 1300 North 16th Street – Campus Pointe – Haverkamp Properties: Candace Dowdy referred to the location of the proposed project on a Power Point presentation. Candace stated that the Planning Commission and Board of Zoning had both reviewed this item for advisory compatibility in the previous month's meetings and that the final preliminary plat was to be presented tonight; however in speaking to the developers, Candace said that they are looking at making more modifications to the plat. When the plat comes back to the Planning Commission, Phase II will be taken off. There will be a mixture of 1, 2, 3 and 4 bedroom units throughout the development. The total acreage for this development is 32.40 acres including 19.10 acres in Phase I and 13.30 acres in Phase II. Haverkamp Properties is asking the BZA to focus on Phase I which consists of 278 units (580 beds). (Phase II will be a potential future phase depending on demand). After the information is recorded from the final plat, if any changes, alterations, additions or deletions are made; the revised plat will go back before the Planning Commission and Board of Zoning.

Candace recapped the concerns from last month's meetings. There will be two entrances for the project, one on North 16th Street and one on WalMart Drive. (The developers will be required to extend WalMart Drive north along their property line in order to provide this access.) The developers will be required to dedicate an additional 15 feet of right of way along North 16th for future improvements. The majority of this property is zoned B-2 (Highway Business) which allows residential Planned Development Projects as conditional use only. The smaller portion of the property is zoned R-4 (Multi-Family Residential). The developers are basing their parking requirements for the development on one parking space per bedroom, which has proven adequate in Mr. Haverkamp's other similar developments. Candace stated that there has not been an elevation of the buildings presented at this time; however, the height of the buildings will require a variance since they are four stories and over the 35 feet height limit. The developers are also proposing to construct two buildings along the North 16th Street entrance for retail sales on the lower level with student housing on the upper level. (The location of these two buildings will be where the old Moose Lodge building is currently located.) This will meet the 50 foot front setback which is a B-2 requirement. Also at last month's meeting, both the Planning Commission and BZA requested that the preliminary plat include sidewalks and bike paths. Sidewalks are shown on the preliminary plat along the property line on North 16th Street (which

may be deferred until road improvements are made) and on WalMart Drive down to the intersection of Lowes Drive. No bike paths are shown on the plat because at this time there are no connecting bike paths outside of the development. Screening will be required between the development and the adjacent residential areas. The plat shows that the developer is proposing signage on both sides of 16th Street. The BZA will have to address this at a later date because there is not a site plan for the proposal. Phase I will encompass eight buildings (to be built over a three year span, with the BZA's approval of an extended year over the normal two year period). Ms. Dowdy reported that the developer has been asked to consider changing the name of the proposed project from Campus Pointe since the city already has Campus Suites located on North 16th Street. The change would be for 911 emergency response purposes to prevent confusion of similarities or sound alike.

Ed Davis, member of Planning Commission as well as BZA, gave a review of the Planning Commission meeting that was held the previous night. Mr. Davis commented that Commissioner Peebles was concerned with the results of the traffic study. Mr. Kind was concerned about the wooded area and saving the trees. The Commissioners agreed that screening should be provided behind the residential area adjacent to this development. The Planning Commission made the final motion to approve the preliminary plat and to make the recommendation for the BZA to consider a conditional use for this project, knowing that the developers were going to be making minor changes.

Chairman Seiber opened the public hearing and asked if there was anyone there wishing to speak in favor of the conditional use. Brent Haverkamp, 4915 Timber Creek Lane, Ames, Iowa 50010, was sworn in. Mr. Haverkamp is the owner of Haverkamp Properties. Mr. Haverkamp stated that he had been constructing student housing for approximately 15 years and in that time, his company has built, owned and managed probably one dozen large scale complexes. Mr. Haverkamp stated whenever they started a new project; a market analysis is done to indicate the demand and type of units that people want. Based on the analysis, they will be reconfiguring some of the buildings with the addition of townhomes. Mr. Haverkamp confirmed that they have a one parking space per bed requirement and it has proven adequate in the other five developments that he now owns; however, there are also plans to have about 50 additional spaces with this project. The market analysis showed that 80% of students have cars, but Mr. Haverkamp's experience has been closer to 90% with cars. Their intent is to completely provide for all the parking needs within their parking spaces.

Haverkamp Properties submitted preliminary plans before the Murray Board of Zoning Adjustments for review. Mr. Haverkamp said that the development would be four story partial brick/siding buildings with townhomes on the first two floors and apartments on the top two floors. Phase I will encompass eight buildings (to be built over a three year span) and Phase II (will be a potential future phase depending on demand). The buildings are designed around a large green space area. The trees that are to the north of the development are not high quality trees; therefore, they will be removed. The development will have full amenities such as a swimming pool, hot tub, computer room, cinema room, game room, exercise room, high speed wireless internet and cable, along with some of the units being furnished. The height will be

somewhat similar to Campus Suites which has a four story component on one side and a three story component on the other side; therefore, Mr. Haverkamp will be requesting a 20 foot height variance. Mr. Haverkamp stated that the requirement for the side setback between the residential and commercial is for 25 feet; thus, requiring another variance for this. The screening, he would defer to the Board's decision. Mr. Haverkamp stated that he needed a vote tonight on some of the major issues that will require variances so that he can decide whether he should proceed on this project.

Mr. Haverkamp continued by saying that they had met several time with Murray State University and that Josh Jacobs had spoken the night before on behalf of the MSU president in support of the project. MSU has a desire to see more high quality "Class A Housing" properties. He stated that this type of housing tends to be an attraction to the students and allows Murray State to do a better job of recruitment.

Bobby Deitz, 645 Swift Road, Kirksey, KY 42054, was sworn in. Mr. Deitz is the Civil Engineer from Geo Tech Engineering that is representing the Campus Pointe project. Mr. Deitz reported on the traffic study. He stated that Geo Tech hired Jordon, Jones and Goulding from Goshen, KY to perform the traffic study. Ms. Diane Zimmerman is the Civil Engineer for the project. She is a graduate of University of Kentucky and Licensed Professional Engineer in the state of Kentucky. She has performed 174 traffic impact studies in the past 13 years for 13 separate agencies. She has over 20 years experience in traffic planning and operations. The traffic counts were made March 24 – March 26, 2008 during peak hours of 7:15 – 8:15 a.m. and at 4:30 – 5:30 p.m. The intersections studied were on KY 121; the intersection of WalMart Drive and 16th Street and on 16th Street going north; Lowes and Campbell Street, as well as the four-way stop at WalMart and Lowes Drive. Traffic studies are done using the highway capacity analysis procedures which are developed by the National Transportation Research Board. (The standard used in the United States for doing traffic studies.) It grades them on an A to F scale with Level Service E considered operating at capacity and F as failing. For major service urban areas they consider Level Service D acceptable. The study concluded that the over-all grade was Level C which means stable flow; therefore, the project would only add minimal impact (4 second delays per car) and the existing system should operate acceptably with the additional traffic. Mr. Deitz also noted that the Kentucky Department of Transportation is already working on purchasing right of way property for improvements to be made at the intersection at KY Hwy 121 and North 16th. They expect to possibly start construction at the end of 2009 or possibly into 2010.

Chairman Seiber asked Mr. Haverkamp if he was aware that he would be building in a seismic zone and he stated that he was. He said that the architects they are interviewing in Kentucky are all licensed to work in seismic zones. They have discussed the various methods that are used to insure that the buildings are constructed in a safe manner.

Chairman Seiber asked if there was anyone wishing to speak in opposition to the development of the project. *Ed Davis left the meeting at 6:15 p.m.*

Candace presented two letters as exhibits. Each letter gives information on the marketing research that was done prior to their developments.

Exhibit A is from Kim Bryan, Community Manager for The Chase (previously Murray Place). The Chase currently has 408 beds and they are at 36% pre-leased, which is half of what they were last year.

Exhibit B is from Henry Morton, developer for Campus Suites. Campus Suites currently has 490 beds and they are at 51% pre-lease for the fall semester.

Daniel Yong, 20 Scarlett Drive, Murray, KY 42071, was sworn in. Mr. Yong, owner of August Moon, stated that he was not opposed to the proposed project, but he wished to voice his concerns. Mr. Yong travels 16th Street every day and he feels that 4 second delay per car is adding to the problem that already exists. He sees the need for future expansion of 16th Street with possibly a turning lane. Mr. Yong has significant concerns with water run-off and the additional traffic. Mr. Yong stated that this is a big project that he feels will be good for the community; however, he does think that these issues should be addressed.

Bobby Deitz addressed the issue of storm water run-off that Mr. Yong was concerned with. He stated that the project will be designed in full conformance to the city ordinance in regards to storm water detention. He also stated that the project will not increase storm water run-off onto any of the surrounding properties.

Chairman Seiber closed the public hearing and opened for Board discussion.

Greg Mayes made a motion: 1) to approve a 20 foot height variance increase for the 35 feet that is required for the building structure based on the precedence of student housing being built in this area with that height, it being adjacent to a retail commercial establishment, and the topography of the land; 2) to approve a variance to allow a minimum parking requirement of one parking space per bed plus an additional 50 spaces to serve other staff, visitors, or other parking needs that might be seen for the development based on the fact that it will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Kim Griffo seconded the motion and it carried with a 4-0 voice vote.

Darren Jones made a motion to table the conditional use permit application. Kim Griffo seconded the motion and it carried with a 4-0 voice vote.

Public Hearing to Review the Dimensional Variance Application for a Two Foot Height Variance and a Ten Foot Front Setback Variance on a Proposed Fence – 1606 North 4th Street – Keith Morgan: Peyton Mastera pointed out the property on a Power Point presentation. Mr. Morgan would like to install 6' tall privacy fence on his front property line at 1606 N. 4th Street to protect from hazardous conditions and to act as a sound barrier. This would

require both a 2' height variance as well as a 10' front setback variance. Upon inspection of the property, it is the feeling of the Murray Planning Department that if this variance is granted, the fence will not obstruct the visibility along N. 4th Street from either those passing by or from the residents pulling out of the property; the configuration of the property limits the placement of a fence.

Chairman Scott Seiber opened the public hearing and asked if there was anyone there that wished to speak in favor of the Dimensional Variance. Mr. Keith Morgan, 1606 North 4th Street, was sworn in. Mr. Morgan stated that his occupation is a Safety Representative. He continued by describing the area where he lived and stated that the speed limit was 55 mph in front of his home. He explained since there had been three wrecks in front of his house recently that he would like to put up a fence as a guide for motorists. He has contacted the State repeatedly and they do not wish to do anything about this situation. The fence will not be an enclosure, but just act as a wall.

Chairman Seiber asked if there was anyone there wishing to speak in opposition of the Dimensional Variance request. There was no one, so the public hearing was closed. Discussion was opened for The Board.

Greg Mayes made a motion to decline the applicant's request for a six foot fence across the front of the property at 1606 North 4th Street. The motion was seconded by Darren Jones and the motion passed with a 3-1 vote. Kim Griffio voted no.

Public Hearing to Review the Dimensional Variance Application for a Seven Foot Side Setback and a Ten Foot Rear Setback Variance on Proposed Addition to a Home – 502 Stone Ridge Lane – Sheila Wilson: Peyton Mastera referred to the property of the proposed variance on a Power Point presentation. He stated that since talking to Ms. Sheila Wilson, she had informed him that she was in the process of abolishing the lot line between her two adjoining lots which would combine the lots into one tract of land. Once the new Minor Subdivision Plat is approved, she will not be requesting a seven foot side setback; therefore, the dimensional variance application should be amended to show that she is only asking for a ten foot rear setback variance. Ms. Wilson's reason for asking for a setback variance is for a proposed addition to her home.

Peyton stated that Ms. Wilson had attained 80% of her neighbor's signatures stating their approval. The Board cannot vary subdivision restrictions; however, there is a Subdivision Waiver Agreement (that has recently been modified by the City Attorney) that Ms. Wilson will be signing. It is an agreement which will release the city from any future liabilities, lawsuits, cause of actions, etc. for not meeting the covenants and restrictions. The covenants and restrictions of Stone Creek Subdivision mirror that of the City of Murray Zoning Ordinance in that structures may not be built closer than 25' from a rear property line and 10' from a side property line.

The public hearing was opened and Chairman Seiber asked if there was anyone wishing to speak in favor of or against the application. No one wished to speak. Chairman Seiber closed the public hearing and opened for discussion from the Board.

Greg Mayes made a motion to grant the applicant, Sheila Wilson, a ten foot rear setback variance at 502 Stone Ridge Lane contingent upon revision of the Minor Subdivision Plat and contingent upon the signed Subdivision Waiver Agreement with the City of Murray that will waive any liability of the City from the neighborhood association with the findings that this would not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Kim Griffo seconded the motion and it carried with a 4-0 voice vote.

Questions and comments: There were none.

Darren Jones made a motion to adjourn. Greg Mayes seconded the motion and it carried with a unanimous vote. The meeting was adjourned at 7:47 p.m.

Chairman, Scott Seiber

Recording Secretary, Reta Gray